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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,385	04/15/2004	Nathan H. Faulkner	089339-0392	8454
26371	7590	11/02/2005	EXAMINER	
FOLEY & LARDNER LLP			NGUYEN, PHUONGCHI T	
777 EAST WISCONSIN AVENUE			ART UNIT	PAPER NUMBER
SUITE 3800				
MILWAUKEE, WI 53202-5308			2833	

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AKC

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/825,385	FAULKNER, NATHAN H.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Phuongchi Nguyen	2833	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-6, 8-13 and 15-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6, 8-13 and 15-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 15 April 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/11/05</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 13, 2005 has been entered.

Applicant's amendment October 13, 2005 is acknowledged. It is noted that claims 1, 9 and 16 are amended. Claims 7, 14 and 19 are canceled.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-6, 8-13, 15-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faulkner et al (US5760339) in view of F.C Johnston et al (US3004097).

In regards to claim 1, Faulkner et al discloses (figure 7B) an elbow stack for connecting two busway sections (18, 18), the elbow stack comprising a first splice plate (155) configured to define a first bore (160); at least one conductor/insulator assembly (152+154) configured to define a second bore (161), with the assembly (152+154) having a first connector end (horizontal end) and a second connector end (vertical end), wherein one end (horizontal end) is not parallel to the other end (vertical end); a second splice plate (156) configured to defined a third bore (162); and a fastener (158+159) extending through each of the first (160), second (161) and third bores (162), wherein the fastener (158+159) forces the conductor/insulator assembly (152+154), positioned between the first (155) and second splice plates (156), into contact with the busway

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sections (18, 18). Faulkner et al lacks an elbow stack for connecting two-busway section at an angle other than 180<sup>0</sup>. However, F.C Johnston et al teaches (figure 8) an elbow stack for connecting two busway sections (73, 74) at an angle other than 180<sup>0</sup>. It would have been obvious to one having ordinary skill at the time the invention was made to modify the connection of elbow stack of Faulkner et al by having a angle connection as taught by F.C. Johnson et al to connect conveniently the busway sections in any direction.

In regards to claims 2 and 9, Faulkner et al discloses the elbow stack wherein the conductor/insulator assembly (152+154) comprises, in order, a first conductor plate (152), a planar shaped insulator plate (154) and a second conductor plate (another 152), with each plate defining a part of the second bore (161). Faulkner et al lacks a polygonal insulator plate. It would have been an obvious matter of design choice to modify change the shape of insulator plate of Faulkner et al to be a polygonal plate; since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. in re Rose, 105 USPQ 237 (CCPA 1955).

In regards to claims 3 and 10, Faulkner et al discloses the elbow stack including a grommet (170) mounted in the second bore (161), with the grommet (170) configured with a throughbore coaxial with the second bore (161).

In regards to claims 4, 11and 16, Faulkner et al discloses the elbow stack including an insulator sleeve (170) disposed on the fastener (158+159) to insulate the fastener (158+159) in the plurality of bores (160, 161, 162).

In regards to claims 5, 12 and 17, Faulkner et al discloses the elbow stack including at least one additional conductor/insulator assembly (152+154) positioned between the two splice plates (155, 156).

In regards to claims 6, 13 and 18, Faulkner et al discloses the elbow stack including a spacer (169) positioned between each conductor/insulator assembly (152+154).

In regards to claims 8, 15 and 20, Faulkner et al discloses the elbow stack including a cover (115) configured to enclose at least a portion of the elbow stack (figure 5B).

*Response to Argument*

4. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, the connection of elbow stack of Faulkner et al is modified by having a connecting two-busway section at an angle other than 180<sup>0</sup> as taught by F.C. Johnson et al for connecting conveniently the busway sections in any direction.

*Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuongchi Nguyen whose telephone number is (571) 272-2012. The examiner can normally be reached on 8:00AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Bradley can be reached on (571) 272-2800 ext 33. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PCN

October 24, 2005

  
P. AUSTIN BRADLEY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800